APPEAL NO. 171936
FILED OCTOBER 5, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on July 27, 2017, with the record closing on July 31, 2017, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ).[1] The ALJ resolved the disputed issues by deciding that the decedent did not sustain a compensable injury on (date of injury), that resulted in his death; that the decedent was not in the course and scope of his employment when involved in a motor vehicle accident on (date of injury); and that the appellant (claimant beneficiary) is not entitled to reimbursement for burial benefits from the respondent (carrier).

The claimant beneficiary appealed the ALJ's determinations as being contrary to the overwhelming weight of the evidence and argued that the decedent was in the course and scope of his employment when he suffered fatal injuries on (date of injury). The carrier responded, urging affirmance.

DECISION

Reversed and rendered.

It is undisputed that the decedent died on (date of injury), when the motorcycle he was riding was struck by another vehicle. Evidence in the record reveals that the decedent arrived at the workplace and began his workday at approximately 6:58 a.m. on (date of injury); that he left the workplace at 7:03 a.m. to return to his residence to retrieve a laptop computer, owned by his employer and used in the performance of his duties, which he had forgotten to bring with him to work that morning; and that, while traveling back to the office, he was involved in the motor vehicle accident that resulted in his death. The record further reveals that the claimant beneficiary incurred liability for the costs of the decedent's burial. The determinant issue is whether the decedent's travel at the time of the motor vehicle accident was in the course and scope of employment.

As a general rule, an injury occurring in the use of the public streets or highways while an employee is traveling to or from work is not compensable. *American General Insurance Co. v. Coleman*, 303 S.W.2d 370 (Tex. 1957). The rule is known as the "coming and going" rule. The rationale of the rule is that "in most instances such an injury is suffered as a consequence of risks and hazards to which all members of the

[1] Section 410.152 was amended in House Bill 2111 of the 85th Leg., R.S. (2017), effective September 1, 2017, changing the title of hearing officer to ALJ.

traveling public are subject rather than risks and hazards having to do with and originating in the work or business of the employer." *Texas General Indemnity Co. v. Bottom*, 365 S.W.2d 350 (Tex. 1963). This general rule is reflected in Section 401.011(12) which defines course and scope of employment as an activity of any kind or character that has to do with and originates in the work, business, trade, or profession of the employer and that is performed by an employee while engaged in or about the furtherance of the affairs or business of the employer. However, course and scope of employment as defined in Section 401.011(12) generally does not include transportation to and from the place of employment except in certain limited circumstances.

In *Evans v. Illinois Employers Insurance of Wausau,* 790 S.W.2d 302 (Tex. 1990), the Texas Supreme Court affirmed the lower court's summary judgment in favor of the insurance carrier holding that the decedent in that case was not on a special mission and in the course and scope of employment when traveling to attend a mandatory, regularly scheduled Monday morning safety meeting prior to traveling to his primary work site. The court held that attendance at the meeting was an integral part of the job and therefore "travel to the safety meeting was simply travel to work." In its opinion, the court stated:

> Had Mr B and Mr E been injured while en route from the safety meeting to the primary work site (at (employer) these injuries would have been covered by the Act. However, since neither of them had begun work, their injuries fall squarely within the "coming and going" rule. . . .

We hold in this case that the decedent was not simply traveling to or from work but had begun his workday at 6:58 a.m. on (date of injury), when he arrived at his office and that, since the travel which resulted in his death occurred after he had begun work, such travel did not fall within the coming and going rule. *See also* Appeals Panel Decision 960562, decided April 19, 1996, a case where a deputy sheriff, who had begun work, was held to have sustained a compensable injury when he returned to his residence to retrieve a logbook used to record his work activities and was thereafter involved in a motor vehicle accident on his way back to his office.

As mentioned above, in order for an injury to be compensable, the injury must occur while the employee is engaged in furtherance of the affairs or business of the employer and the activity must originate in the work, business, trade, or profession of the employer. There is no bright-line rule for determining whether the employee travel originated in the employer's business. Rather each situation is necessarily dependent on the facts. Proof of origination can come in many forms. *See Zurich American Ins. Co. v. McVey*, 339 S.W.3d 724 (Tex. App.-Austin 2011, pet. denied).

In the Discussion section of her Decision and Order, the ALJ indicated that there was no evidence that the decedent was required to return to his residence to retrieve his laptop computer and that, for such reason, "his travel was not in the course and scope of his employment."

We disagree. While the decedent's supervisor testified that the decedent did not need his laptop to connect to the company network and that the decedent could access such information from another computer at the workplace, he also indicated that the decedent would need his laptop to access information stored on its hard drive. The decedent obviously believed it necessary to have access to his assigned computer at work that day as there is no evidence of any personal or other purpose which was furthered by his travel back to his residence after beginning his workday on (date of injury).

Under the specific facts of this case, the decedent's workday began when he accessed the workplace on (date of injury), at 6:58 a.m. His travel to and from his residence after having begun his workday was for the purpose of retrieving his assigned laptop computer which he deemed necessary for the performance of his duties at work that day. Such travel was not simply transportation to and from the place of employment but was travel that both furthered the employer's business and originated in such business. We hold that the ALJ's determination that the decedent was not in the course and scope of his employment when involved in the motor vehicle accident on (date of injury), to be incorrect as a matter of law and against the great weight and preponderance of the evidence. We accordingly reverse the ALJ's decision and render a new decision that the decedent did sustain a compensable injury on (date of injury), that resulted in his death; that the decedent was in the course and scope of his employment when he was involved in a motor vehicle accident on (date of injury); and that the claimant beneficiary is entitled to reimbursement for burial benefits from the carrier.

SUMMARY

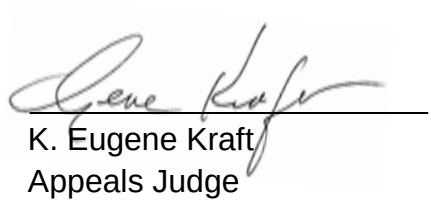
We reverse the ALJ's decision that the decedent did not sustain a compensable injury on (date of injury), that resulted in his death and render a new decision that the decedent did sustain a compensable injury on (date of injury), that resulted in his death.

We reverse the ALJ's decision that the decedent was not in the course and scope of his employment when involved in a motor vehicle accident on (date of injury), and render a new decision that the decedent was in the course and scope of his employment when involved in a motor vehicle accident on (date of injury).

We reverse the ALJ's decision that because the injury of (date of injury), was found not to be compensable, the claimant beneficiary is not entitled to reimbursement for burial benefits from the carrier and render a new decision that the claimant beneficiary is entitled to reimbursement for burial benefits from the carrier.

The true corporate name of the insurance carrier is **OLD REPUBLIC INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.



K. Eugene Kraft
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge